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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN E. LOWTHERT and OLEG RASHKOVSKIY

Appeal 2009-007222
Application 09/766,133
Technology Center 2400

Before JOHN C. MARTIN, ROBERT E. NAPPI,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 27-38, which are all of the pending claims.

We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. Appellants' invention

Appellants' invention relates generally to insertion of advertisements or the like into content such as a movie. Specification 2:8-9.[2]

Figure 1 is reproduced below.

[2] References herein to Appellants' Specification are to the Application as filed rather than to corresponding Patent Application Publication 2002/0100062 A1.

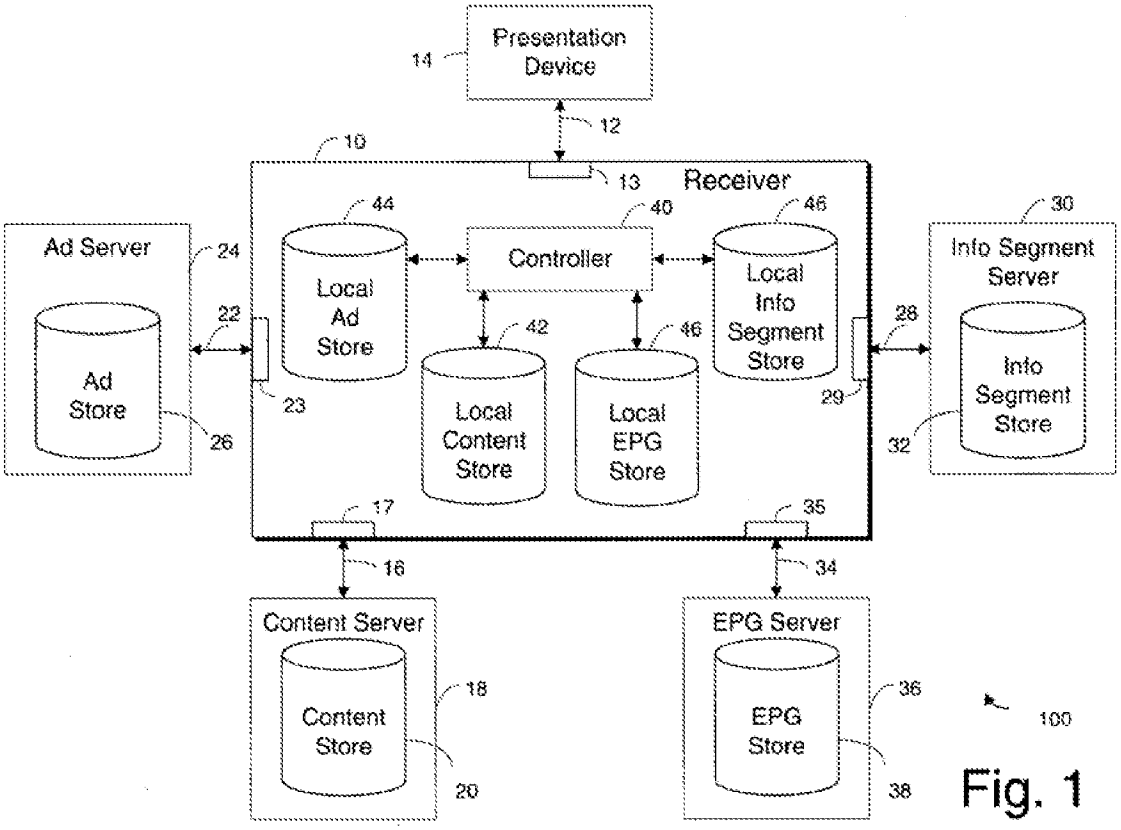

Fig. 1

Figure 1 illustrates "one embodiment of a system 5 [sic; 100] constructed according to the principles of this invention." *Id.* at 3:29-30. Receiver 10 includes a controller 40 coupled to a local content store 42, a local ad store 44, a local info segment store 46, and an optional local EPG (Electronic Program Guide) store 48 (incorrectly identified as 46 in Figure 1). *Id.* at 4:18-19, 25-27. The receiver is also coupled via respective servers 18, 24, 30, and 36 to external content store 20, ad store 26, info segment store 32, and EPG store 38. *Id.* at 4:10-19.

Figures 2-4 are reproduced below.

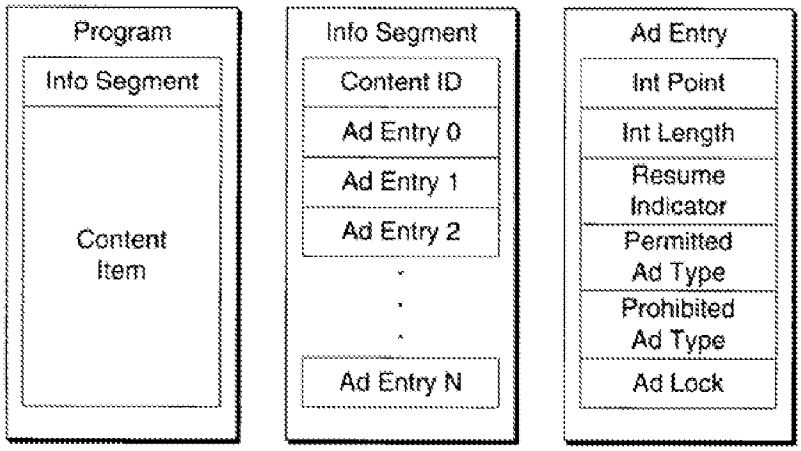

Fig. 2 Fig. 3 Fig. 4

Figure 2 is described in part as follows: "FIG. 2 illustrates one embodiment of a program which includes an info segment and a content item. The info segment is provided to the receiver by the info segment server, and the content item is provided to the receiver by the content server."

Id. at 5:7-9. The Specification further states that "FIG. 2 may be understood to represent a *data stream* which contains the info segment and the content item." *Id.* at 5:9-10 (emphasis added). As explained below, the description of the Figure 5 embodiment suggests the content item depicted in Figure 2 is stored as a "contiguous block."

Figure 3 illustrates an exemplary embodiment of an info segment that may be provided over the info segment link (28) from the info segment server (30). *Id.* at 5:16-17. Figure 4 illustrates the contents of an exemplary ad entry. *Id.* at 6:3-4. In some embodiments, the ad entry can contain an interrupt point identification (Int Point) that indicates a point during the

content item at which an advertisement should be inserted, thereby interrupting the play of the content item. *Id.* at 6:4-7. The interrupt point identification can specify the interruption point in any of a variety of fashions, such as by indicating a time, relative to the start of the content item, at which the ad should be inserted. *Id.* at 6:9-12.

Figure 5 is reproduced below.

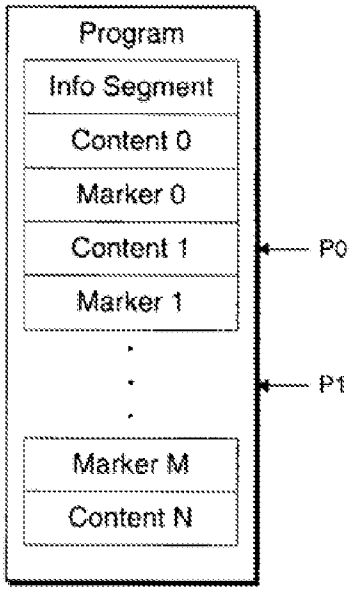

Fig. 5

Figure 5 illustrates an alternative embodiment of the program. *Id.* at 7:28. In this embodiment, "the content item is not stored as a contiguous block, but is stored in separate blocks (Content 0-N) between which are interlaced one or more markers (Marker 0-M)." *Id.* at 7:28-30. As noted above, this suggests that the content item depicted in Figure 2 is stored as a "contiguous block." In the Figure 5 embodiment, the info segments, rather than specifying specific offset times for commercial insertion, can specify

that commercials should be inserted at the markers. *Id.* at 7:30--8:1. This embodiment assumes that the info segment has already been captured by the receiver. *Id.* at 8:9-12.

Figure 12 is reproduced below.

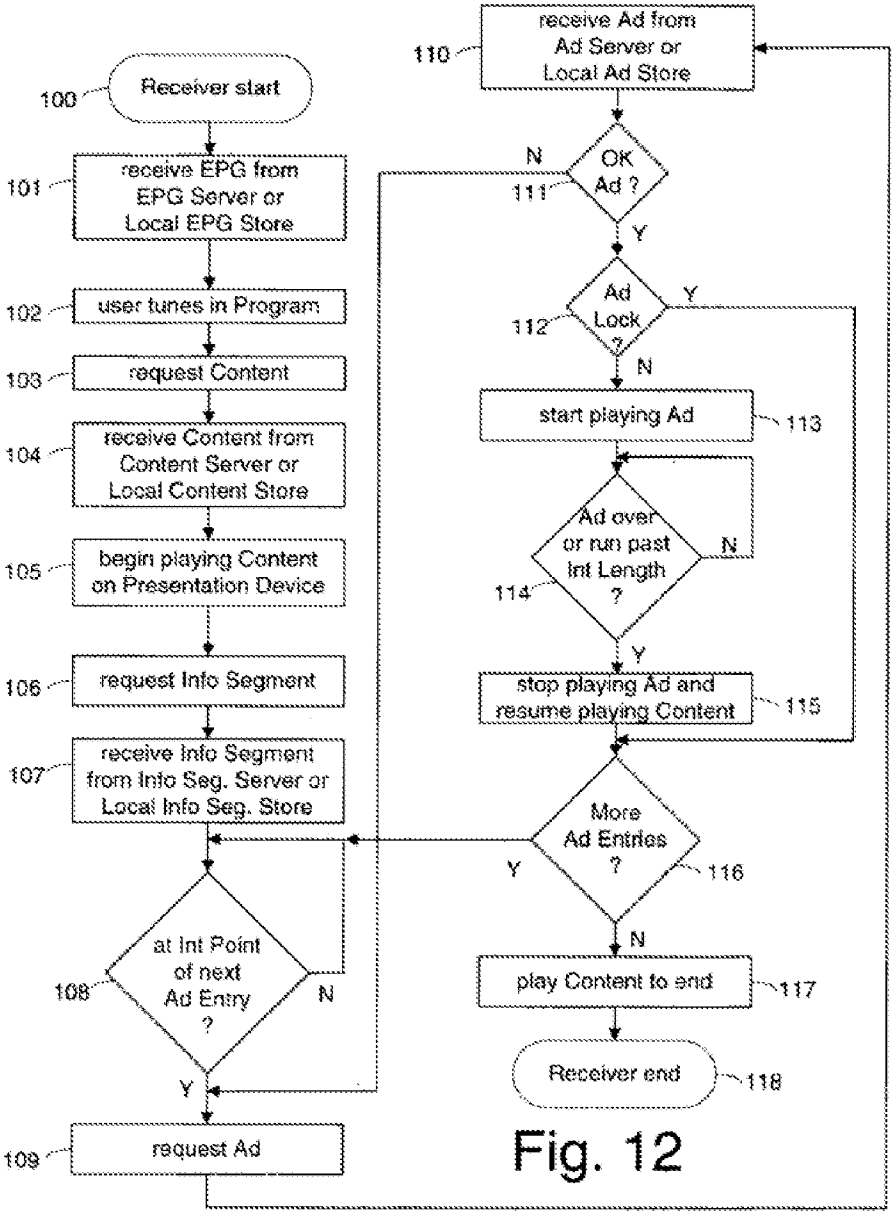

Fig. 12

Figure 12 illustrates one embodiment of a method for operating the Receiver shown in Figure 1. *Id.* at 10:1-2. The Receiver may receive (101) an EPG from an EPG Server or from the Local EPG Store, if it has previously been received and cached. *Id.* at 10:2-4. The user tunes in (102) a program, or the Receiver can do this automatically, such as if the user has programmed the Receiver to always tune in a particular program. *Id.* at 10:5-7. The Receiver requests (103) content for that program, receives (104) the content from the Content Server or from the Local Content Store, if it has previously been received and cached, and then begins to play (105) the content on the Presentation Device. *Id.* at 10:5-9. The Receiver requests (106) an info segment for that program, and receives (107) the info segment from the Info Segment Server or from the Local Info Segment Store, if it has previously been received and cached. *Id.* at 10:9-11.

During play of the content, the Receiver waits (108) until play reaches the first interruption point identified in the info segment, at which point the Receiver requests (109) and receives (110) the ad from the Ad Server or from the Local Ad Store, if the ad has previously been received and cached. *Id.* at 13-16.

B. Claim 27

Claim 27, the sole independent claim, reads as follows:

> 27. A system comprising:
>
> a receiver to receive a contiguous block of a content data stream with an information segment and a plurality of advertisements, said information segment having at least one ad

entry, said ad entry having a field in the form of an interruption point specifier to indicate a point within said contiguous block of content data stream to interrupt the play of said content data stream and to insert an advertisement in said content data stream for play prior to the resumption of the play of the content data stream;

a cache, coupled to said receiver, to store said content data stream with said information segment and said plurality of advertisements; and

an interface, in said receiver, to identify a content data stream location and an advertisement, out of said plurality of advertisements, to insert in said location, said interface to identify, based on data from the interruption point specifier, said location while said content data stream is still stored in said cache.

Claims App. (Br. 12).[3]

C. The references

The rejections before us are based on the following references:

Yiu	US 6,008,777	Dec. 28, 1999
Shoff	US 6,240,555 B1	May 29, 2001
Knepper	US 2001/0042249 A1	Nov. 15, 2001

D. The rejections[4]

Claims 27-30, 34, 37, and 38 stand rejected under 35 U.S.C. § 102(e) for anticipation by Knepper. Final Action 6, para. 6.[5]

Claim 31 stands rejected under 35 U.S.C. § 103(a) for obviousness over Knepper in view of Shoff. *Id.* at 9, para. 8.

Claims 32, 35, and 36 stand rejected under § 103(a) for obviousness over Knepper. *Id.* at 10, para. 9.

Claim 33 stands rejected under 35 U.S.C. § 103(a) for obviousness over Knepper in view of Yiu. *Id.* at 12, para. 10.

ANALYSIS

A. The § 102(e) rejection (claims 27-30, 34, 37, and 38)

Knepper's invention is directed to systems and methods for providing seamless video entertainment with integrated targeted advertisement media

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[3] Appeal Brief filed June 2, 2008.

[4] At pages 3-6 of the Final Action, claim 27 was provisionally rejected for obviousness-type double patenting over claims 20 and 37 of Application 09/561,143 in view of Knepper. The Brief states at page 5 that "[t]he provisional double patenting rejection is not appealed at this time" and at page 9, under the heading "Grounds of Rejection to be Reviewed on Appeal," lists only the rejections under 35 U.S.C. §§ 102(e) and 103(a). The Answer makes no mention of the double patenting rejections and states that "[t]he appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct." We accordingly are treating the double patenting rejections as withdrawn.

files. Knepper [0002]. More particularly, Knepper's invention seeks to provide Internet users with a means of playing media files from the Internet without employing traditional streaming methods. *Id.* at [0008]. In practicing the invention, media files, which can include both entertainment media files and advertisement media files, are downloaded from a server to a client and pre-cached at the client side. *Id.* The media files, when arranged at the client side during playback, represent a series of show clips, or a single, continuous show without appearing to be a multiplicity of media files. *Id.*

More particularly, a show, movie, or other form of entertainment object may be requested by a user, and the set of files of which that entertainment object is composed are delivered to the user over the Internet. *Id.* at [0014]. An instruction set is also downloaded from the server to the client, which directs the client to combine the entertainment object(s) with advertisement media (or other) files selected from the pre-cached set of advertisement media files at run time. *Id.*

The principal issue before us is how to interpret the phrase "a contiguous block of a content data stream" in claim 27. [6] Appellants argue

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[5] Although the Final Action also included claim 35 in the group of claims rejected under 35 U.S.C. § 102(e), the Examiner stated at page 2, paragraph 6, of the Answer that this was an error.

[6] Application claims are interpreted as broadly as is reasonable and consistent with the specification, *In re Thrift*, 298 F.3d 1357, 1364 (Fed. Cir. 2002), while "taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description
(Continued on next page.)

that a "contiguous block" is a discrete (i.e., single) file: "[Knepper's] system provides a sequence of content files and advertisement files and the client simply puts together the files (that are distinct) in the specified sequence. No advertisement is inserted within any discrete media or content file." (Br. 10.) The Examiner has concluded that Appellants' interpretation is unduly narrow and also finds that claim 27 reads on Knepper whether or not Appellants' interpretation is correct. Final Action 6-8. For the following reasons, we agree with the Examiner's interpretation of claim 27 and the finding that this claim 27 thus construed reads on Knepper.

Appellants' asserted narrow interpretation of "a contiguous block" is unpersuasive because they have not explained why that term should be understood to be limited to a single "file," a term that does not appear in the Application as filed.[7] Although the Specification, as noted above, describes the embodiment of Figures 2-4 as storing the content item as "a contiguous block" and describes the Figure 5 embodiment as storing the content item in "separate blocks," these descriptions are insufficient in and of themselves to establish that the term "a contiguous block" should be understood to mean single file. As a result, Appellants have failed to demonstrate error in (1) the Examiner's finding (Final Action 7) that the recited "a contiguous block"

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contained in the applicant's specification," *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997), and without reading limitations from examples given in the specification into the claims, *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

[7] However, the term "filed" is used in discussing related Applications.
(Continued on next page.)

reads on a show or movie consisting of a set of entertainment files, as described in Knepper at paragraph [0014], or (2) the Examiner's finding (Final Action 2) that the recited "a contiguous block" reads on an "episode" in the embodiment depicted in Knepper's Figure 8 (consisting of Figures 8a and 8b) and described in paragraphs [0085]-[0091].

Appellants also argue that Knepper fails to disclose inserting advertisements into a "content data stream":

> [C]laim 27 distinguishes because it calls for inserting the advertisements within a data stream and within a contiguous block of content data stream. This is completely the opposite of what is done in Knepper, which specifically provides a way of playing media files from the Internet "without employing traditional streaming methods." See paragraph 8 [emphasis added].

(Br. 10-11 (brackets in original).) As noted above, Knepper in paragraph [0008] explains that his invention avoids using traditional streaming methods by pre-caching entertainment media files and advertisement media files at the client location and then reading out selected files during playback at the client location in order to present what appears to be a series of show clips or a single, continuous show. Because this is also the way Appellants' disclosed invention works (*see, e.g.*, Fig. 12), the claim term "content data stream" appears to read on Knepper as well as it reads on Appellants' disclosed invention. Appellants have not explained why this is not the case.

For the foregoing reasons, Appellants have not shown error in the Examiner's claim interpretation or the Examiner's finding that claim 27 thus

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Specification 2:2-4.

construed reads on Knepper in the above manner. It is therefore not necessary to decide whether the Examiner is correct to alternatively find that claim 27, when given Appellants' narrower interpretation, reads on Knepper.

The anticipation rejection of claim 27 is sustained, as is the anticipation rejection of dependent claims 28-30, 34, 37, and 38, whose merits are not separately argued. *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

B. The obviousness rejections (claims 31-33, 35, and 36)

For the reason given above, we also sustain the obviousness rejections of dependent claims 31-33, 35, and 36, whose merits are not separately argued. *Nielson*, 816 F.2d at 1572.

ORDER

The Examiner's decision that claims 27-38 are unpatentable over the prior art is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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